

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	FCC File No. 9507560
	)	
PLAINCOM, INC.	)	
	)	
To Provide 39 GHz Point-to-Point Microwave Service in Knoxville, Tennessee	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: April 19, 2000**

**Released: May 22, 2000**

Before the Commission:

1. The Commission has before it two Applications for Review filed by Plaincom, Inc. (Plaincom) on January 28, 2000 and February 11, 2000. Plaincom requests reconsideration of two decisions made by the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau (Division) dismissing the above-captioned application for authorization to provide service in the 38.6 to 40.0 GHz (39 GHz) band.<sup>1</sup> Based upon the record in this proceeding, we find no reason to reverse the Division's decision. Accordingly, we deny Plaincom's Applications for Review.

2. We have analyzed the Applications for Review and find that the Commission staff properly decided the matters raised. The Commission has established and affirmed a processing policy concerning 39 GHz channels that includes the dismissal of (a) applications that failed to meet the thirty-day public notice requirement as of November 13, 1995; (b) all new applications, major modification applications and amendments filed on or after November 13, 1995; and (c) applications whose mutual exclusivity was not resolved by December 15, 1995 and amendments resolving mutual exclusivity that were filed on or after December 15, 1995.<sup>2</sup> In addition, the Commission's Rules provide for the dismissal of mutually exclusive applications and late-filed competing applications.<sup>3</sup> The above-referenced application is dismissed because the mutual exclusivity was not resolved by December 15, 1995 and the amendments resolving the mutual exclusivity were filed on or after December 15, 1995. Therefore, we

---

<sup>1</sup> See Application of Plaincom, Inc., *Order*, DA 99-3020 (rel. Dec. 29, 1999); Letter from Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, to Plaincom (Jan. 12, 2000).

<sup>2</sup> See Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, *Report and Order and Second Notice of Proposed Rulemaking*, ET Docket No. 95-183, 12 FCC Rcd 18600, 18639-45 ¶¶ 83-97 (1997); *aff'd* Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, *Memorandum Opinion and Order*, 14 FCC Rcd 12428, 12440-51 ¶¶ 19-44 (1999).

<sup>3</sup> See 47 C.F.R. § 21.31(b)(2)(i) (1995); 47 C.F.R. § 101.45(b)(2)(i) (disposition of mutually exclusive applications). See also 47 C.F.R. § 1.934 (dismissal of defective applications).

uphold the staff decision for the reasons stated therein. There is no reason to disturb it.

3. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) and 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c)(5) and Section 1.115(g) of the Commission's Rules, 47 C.F.R. § 1.115(g), the Applications for Review, FCC File No. 9507560, filed by Plaincom on January 28, 2000 and February 11, 2000 ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary